CHAI KIN LOONG

v.

DATUK LO FUI MENG & ORS

HIGH COURT MALAYA, SEREMBAN
LOW HOP BING J
[CIVIL SUIT NO: 22-75-2004]
28 JUNE 2004

CIVIL PROCEDURE: *Injunction - Ex parte injunction - Ex parte injunction restraining shareholders from exercising voting rights at EGM - Ex parte injunction obtained one day before EGM - Whether effect of injunction was to stop progress of meeting of a body corporate - Whether such injunction prohibited under O. 29 r. 1(2C) Rules of the High Court 1980.*

The defendants applied to set aside an *ex parte* injunction obtained by the plaintiff preventing them from exercising their voting rights at an extraordinary general meeting ('EGM') of one Cepatwawasan Group Bhd ('the company'). The defendants complained that the effect of the *ex parte* injunction was to stop the EGM of the company, and as such, was prohibited under O. 29 r. 1(2C) of the RHC 1980. The issue before the High Court was whether the plaintiff's *ex parte* injunction was obtained to 'stop the progress of a meeting of a body corporate' within the meaning of O. 29 r. 1(2C).

Held (allowing the defendants' application with costs):

[1] An injunction is to be construed by reference to the intention as expressed in the injunction itself. If the words contained in the injunction are precise and unambiguous, there is no room for any construction other than the one expounding those words in their ordinary and natural meaning. An order which specifically refers to the restraining of the exercise of voting rights contemplates the holding of a meeting or a meeting in progress.
(p 60 f)

[2] It was significant to note that the EGM was scheduled to be held on 21 May 2004 whereas the *ex parte* injunction was obtained by the plaintiff on the preceding day, ie, 20 May 2004. Para 1 of the *ex parte* injunction referred to the restraining of the exercise of the first, second and third

defendants' voting rights at the EGM. The EGM had also to be adjourned since the first, second and third defendants were restrained from exercising their voting rights at the EGM. There was no doubt that the effect of para 1 of the *ex parte* injunction was clearly to stop the progress of the EGM of the company. The *ex parte* injunction thus fell within the prohibition under O. 29 r. 1(2C) RHC 1980. (pp 60 h & 61 a)

Case(s) referred to:
Goh Boon Kim v. Taman Sungai Dua Development Sdn Bhd [1995] 4 MLJ 553 ***(foll)***
Motors Sports International Ltd & Ors v. Delcont (M) Sdn Bhd [1996] 3 CLJ 483 CA ***(refd)***
Tan Kim Seng v. Tan Kim San [1994] 3 CLJ 671 HC ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 29 r. 1(2C)

For the defendants - Gideon Tan; M/s Gideon Tan Razali Zaini
For the plaintiff - Jagjit Singh (Melvin Selvam Thambirajah & Azrul Fadzli); M/s Jagjit Singh & Co

Reported by Andrew Christopher Simon

JUDGMENT

Low Hop Bing J:

Application

This is an application in encl. (8) by the defendant to set aside the *ex parte* injunction obtained by the plaintiff on 20 May 2004 ("the *ex parte* injunction").

The grounds relied upon by the defendant are:

1. The effect of the injunction was to stop the holding of an extraordinary general meeting (EGM) of Cepatwawasan Group Berhad ("Cepatwawasan") under O. 29 r. 1(2C) of the Rules of the High Court 1980; and

2. Non-compliance with O. 29 r. 1(2A)(c), (d), (e) and (g) of the same rules.

For brevity and convenience, a reference to an order and rule hereinafter is a reference to that order and rule in the Rules of the High Court 1980.

Factual Background

From the affidavits filed herein, the factual background reveals that in January 2004, the first, second and third defendants together with one Ho Hee Chung ("the vendors") agreed to sell their shares in Cepatwawasan to the plaintiff.

The fourth defendant prepared the Call and Put Option Agreement ("CPO Agreement") for the sale of vendors' moratorium shares to the plaintiff, which CPO Agreement the vendors have executed. The fourth defendant advised that the moratorium shares could only be transferred to the plaintiff after the removal of the moratorium restriction which was imposed in January 2004.

At all material time, the plaintiff was ready, able and willing to pay the price for the shares.

However, the plaintiff was advised by the fourth defendant not to execute the CPO Agreement in January 2004 on the ground that it would contravene the current law regulating the sale and purchase of shares under the moratorium restriction.

As the vendors have already executed the CPO Agreement, the fourth defendant requested the plaintiff to open a safety box in Mayban to deposit a sum of US39,500 as deposit for the purchase of the moratorium shares pending the notification by the fourth defendant of the removal of the moratorium restriction.

The fourth defendant is having custody of the key to the safety box as a stakeholder so that the vendors are assured of the plaintiff's intention to complete the CPO Agreement upon the removal of the moratorium restriction.

At the end of March 2004, the plaintiff was informed by his elder brothers that the first and the second defendants have requisitioned for an EGM of Cepatwawasan for the purpose, *inter alia*, of removing his elder brothers from the post of executive directors, and re-appointing the first and the second defendants as directors of Cepatwawasan.

The plaintiff was unable to assist his elder brothers by giving them proxy for the purpose of voting at the EGM because the plaintiff has not been notified of the removal of the moratorium restriction. Differences developed between the plaintiff and his elder brothers. Subsequently, the plaintiff's elder brothers informed the plaintiff that the moratorium restriction has been removed.

The fourth defendant assured the plaintiff that the first, second and third defendants were ready to sell their shares and requested the plaintiff to release the said deposit.

When the plaintiff contacted the fourth defendant, the fourth defendant informed the plaintiff that he has no instructions from the other three defendants to release the CPO Agreement for execution by the plaintiff. Mr. Ho who has agreed to proceed with the sale of his shares assured the plaintiff that he would vote in accordance with the plaintiff's wishes at the EGM.

By reason of the failure, refusal and neglect of the first, second and third defendants to give instructions to the fourth defendant to release the CPO Agreement for execution by the plaintiff, they were alleged to have defrauded the plaintiff in the sale thereof.

Further, the fourth defendant as stakeholder was alleged to have breached his obligations when he admitted that he has released to a third party the CPO Agreement which had been executed by the other three defendants.

The EGM held on 21 May 2004 was adjourned by the chairman "in the interest of fairness" pending the hearing and disposal of the suit herein.

The plaintiff has obtained the *ex parte* injunction to maintain the *status quo* so that the plaintiff's suit would not be rendered futile.

Submissions By Parties And Decision Of Court

En. Gideon Tan, learned counsel for the defendants, submitted that the *ex parte* injunction was obtained by the plaintiff to stop the progress of the EGM on 21 May 2004 in contravention of O. 29 r. 1(2C) and r. 1(2A)(c), (d), (e) and (g). He cited *Tan Kim Seng v. Tan Kim San* [1994] 3 CLJ 671 HC; *Goh Boon Kim v. Taman Sungai Dua Development Sdn Bhd* [1995] 4 MLJ 553 HC; and *Motors Sports International Ltd & Ors v. Delcont (M) Sdn Bhd* [1996] 3 CLJ 483 CA.

En. Jagjit Singh, assisted by En. Melvin Selvam Thambirajah and En. Azrul Fadzli, submitted, *inter alia*, that there are serious questions to be tried, that damages to the plaintiff would not be quantifiable, and that the balance of convenience is in favour of the plaintiff to maintain the *status quo.*

In respect of the EGM, it was argued for the plaintiff that the EGM was adjourned "in the interest of fairness" and that it was not the specific words of the *ex parte* injunction which had caused the adjournment, as a result of which O. 29 r. 1(2C) does not apply.

Further, it was contended for the plaintiff that the *ex parte* injunction clearly stipulated, *inter alia*, that the first, second and third defendants are prohibited from using their voting rights at the EGM in relation to their 11,750,000 shares in Cepatwawasan.

Having considered the aforesaid submissions of the respective learned counsel, I am of the view that the sole question for determination herein may be stated as follows:

> Is the effect of the *ex parte* injunction obtained by the plaintiff 'to stop the progress of a meeting of a body corporate' within the meaning of O. 29 r. 1(2C)?

The answer to this question is to be found by a true construction on the relevant terms of the *ex parte* injunction, which merit reproduction as follows:

1. Defendant Pertama, Defendant Kedua dan Defendan Ketiga secara sendiri atau bersama atau melalui agennya atau proksinya atau dengan apa carapun dihalang dan satu injunksi sementara diberi untuk menghalang mereka daripada menggunakan hak-hak mengundi di dalam saham-saham milik mereka seperti berikut:

   i) Defendan Pertama - 7,505,000 unit saham;

   ii) Defendan Kedua - 2,063,000 unit saham;

   iii) Defendan Ketiga - 2,182,000 unit saham;

   di dalam Mesyuarat Agung Khas bagi Cepatwawasan Group Berhad (No. Syarikat: 536499) yang akan diadakan pada 21.5.2004 sehingga tuantutan Plaintif di dalam Writ Saman didengar dan diputuskan;

2. Defendan Pertama, Defendan Kedua dan Defendan Ketiga secara sendiri atau bersama atau melalui agennya atau proksinya atau dengan apa caranya dihalang dan satu injunksi sementara diberi untuk menghalang mereka daripada mempunyai apa-apa urusan dengan saham-saham tersebut sehingga tuantutan Plaintif di dalam Writ Saman didengar dan diputuskan.

3. Defendan keempat secara sendiri proksinya atau dengan apa carapun dihalang dan satu injunksi sementara diberi untuk menghalang Defendan Keempat daripada menyerahkan salinan-salinan asal "Call and Put Option Agreements" yang telah ditandatangan oleh Defendan Pertama, Defendan Kedua dan Defendan Ketiga kepada Defendan Pertama, Defendan Kedua dan Defendan Ketiga atau agennya atau proksinya atau mana-mana pihak ketiga atau melalui agennya atau tanpa perintah Mahkamah yang mulia ini.

[My translation:

1. First Defendant, Second Defendant and Third Defendant either personally or jointly or by his agent, proxy or howsoever be restrained and an interim injunction be granted to restrain them from exercising their voting rights in the shares held by them as follows:

a

i) First Defendant - 7,505,000 units of shares;

ii) Second Defendant - 2,063,000 unit of shares;

iii) Third Defendant - 2,182,000 unit of shares;

b

at the Extraordinary General Meeting of Cepatwawasan Group Berhad (Company No. 536499) to be held on 21 May 2004 until the plaintiff's claim in the writ of summons has been heard and determined;

c

2. First Defendant, Second Defendant and the Third Defendant ether personally or jointly or by his agent or proxy or howsoever be restrained and an interim injunction be granted to restrain them from having any dealings in the said shares until the plaintiff's claim in the writ of summons has been heard and determined;

d

3. The Fourth Defendant either personally or jointly or by his agent or proxy or howsoever be restrained and an interim injunction be granted to restrain the Fourth Defendant from delivering original copies of the Call and Put Option Agreements which have been executed by the First Defendant, Second Defendant and Third Defendant to the First Defendant, Second Defendant and Third Defendant or their agents or proxies or any other third party without the order of this Honourable Court.]

e

A reference hereinafter to a paragraph is a reference to that paragraph in the *ex parte* injunction.

In *Goh Boon Kim, supra*, at p. 556 h-i, I said that an injunction is to be construed by reference to the intention as expressed in the injunction itself. If the words contained in the injunction are precise and unambiguous, there is

f

no room for any construction other than the one expounding those words in their ordinary and natural meaning.

At p. 557 f-g in the same case, I observed that an order which specifically refers to the restraining of the exercise of voting rights contemplates the holding of a meeting or a meeting which was in effect in progress.

g

Applying these principles and upon a true construction of the paragraphs, it is to be noted that paras. 2 and 3 are consequential upon and incidental to para 1 which plays a pivotal role, and a determination on the effect of para 1 would also dispose of the determination on paras. 2 and 3.

h

What then is the effect of para. 1? It is significant to note that the EGM was scheduled to be held on 21 May 2004 and the *ex parte* injunction was obtained by the plaintiff on the preceding day ie, 20 May 2004, and that the

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ex parte injunction in para. 1 refers to the restraining of the exercise of the first, second and third defendants' voting rights at the EGM, which had to be adjourned, since the first, second and third defendants have been restrained thereby from exercising their voting rights at the EGM. There is no doubt in my mind that the effect of para. 1 is clearly to stop the progress of the EGM of Cepatwawasan on 21 May 2004.

O. 29 r. 1(2C), where relevant, reads as follows:

> Notwithstanding para (2) of this rule, a Judge shall not grant an injunction on an *ex parte* application if the effect is to stop the ... progress of a meeting of a body corporate ... .

A case in point is to be found in *Tan Kim Seng, supra*, which was an application by the respondent to set aside an *ex parte* injunction obtained by the applicant to restrain the respondent from exercising his voting rights attached to shares in a body corporate. Abdul Malek Ahmad J (now FCJ) held, *inter alia*, that the *ex parte* injunction to stop a particular shareholder from exercising his voting rights came under the prohibition specified in O. 29 r. 1(2C). His Lordship added that although the order did not actually stop the holding of the EGM, the fact that the respondent despite being present at the meeting was restrained from exercising his voting rights had the effect of stopping the progress of the EGM.

In the light of the above, I do not see the necessity to deal with the other issues raised in the submissions of the respective learned counsel, except to extend my commendation to them for their efforts expended thereon.

On the foregoing grounds, I hold that the *ex parte* injunction falls within the prohibition in O. 29 r. 1(2C), to which the plaintiff was not entitled, as the clear provisions are that "a judge shall not grant an injunction on an *ex parte* application" if the effect is e.g. to stop the progress of a meeting of a body corporate such as Cepatwawasan.

In the circumstances, I hold that the answer to the above question for determination is in the affirmative. Hence, the defendant's application in encl. (8) is hereby allowed with costs, the *ex parte* injunction is set aside and damages, if any, be assessed by the Deputy Registrar of this court against the plaintiff.